

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
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Report Summary

TO: Members of the Judicial Council

FROM: Administrative Office of the Courts
Melissa W. Johnson, Managing Attorney

DATE: April 3, 2000

SUBJECT: Miscellaneous Technical Changes to Rules and Forms (amend Cal. Rules of Court, rules 828, 1432, and 1452; revise forms CH-120, CH-140, CH-150, SC-120, 982(a)(6), 1286.50, and 1299.16) (**Action Required**)

Issue Statement

Advisory committees, court personnel, members of the public, and staff have identified errors in rules and forms resulting from changes in statutes and inadvertent omissions.

Recommendation

Administrative Office of the Courts staff recommends that the Judicial Council, effective July 1, 2000:

- (1) Amend rule 828(b)(5) to require the clerk to send a copy of form TR-235, *Officer's Declaration*, to the arresting officer's agency when a defendant makes a request for trial by written declaration.
- (2) Amend rule 1432(e) to correctly cross reference rule 1407.
- (3) Amend rule 1452 to correctly cross reference Welfare and Institutions Code, sections 301 and 360.
- (4) Revise forms CH-120, *Order to Show Cause and Temporary Restraining Order*, and CH-140, *Order After Hearing on Petition for Injunction*

Prohibiting Harassment, to correct the warning notices on the second page of each form so that they are in bold print.

- (5) Revise form CH-150, *Instructions for Lawsuits to Prohibit Harassment*, to correctly state that the defendant must be served five days before the hearing.
- (6) Revise form SC-120, *Defendant's Claim and Order to Plaintiff (Small Claims)*, to include a declaration that no plaintiff is in the military service.
- (7) Revise form 982(a)(6), *Request for Entry of Default*, to (a) include a reference to a "legal document assistant," (b) correct the reference to "clerk's judgment" to "entry of default," and (c) delete an obsolete notice on the bottom of the form.
- (8) Revise form 1286.50, *Declaration for Default or Uncontested Dissolution or Legal Separation (Family Law)*, to correctly cross reference form 1285.55, *Property Declaration (Family Law)*.
- (9) Revise form 1299.16, *Notice of Entry of Judgment and Proof of Service by Mail (Governmental)*, to conform to the requirement of Family Code section 17430(d) that the social service agency, rather than the court, serve the notice of entry of judgment.

The text of the rules is attached at pages 5 and 6 and the forms are attached at pages 7 through 14.

Rationale for Recommendations

Rule 828, Trial by Written Declaration. Subdivision (b)(5) of rule 828 directs the clerk to send the arresting officer's agency specified information and forms after a defendant files a request for trial by written declaration. Effective January 1, 2000, a form was created for the officer to use in responding to the request, *Officer's Declaration* (form TR-235). However, inadvertently, subdivision (b)(5) was not amended to require that the clerk send a copy of this form to the arresting officer. The rule should be amended to require the form to be sent, to ensure that the proper form is used for the declaration. The Traffic Advisory Committee supports this change

Rule 1432, Petition for Modification. The proposed change to rule 1432 corrects a reference to rule 1406 for notice requirements on a Welfare and Institutions Code section 388 petition for modification. The correct reference for those notice provisions is rule 1407.

Rule 1452, *Failure to Cooperate with Services*. The proposed amendment to rule 1452 updates references to three statutes. The court now orders services under Welfare and Institutions Code section 360(b), not section 360(a). The time period for these services is now found at Welfare and Institutions Code section 301, not section 330. If a family is unable or unwilling to cooperate with the services provided, a petition may be filed as provided in Welfare and Institutions Code section 360(c), not 360(b).

Form CH-120, *Order to Show Cause and Temporary Restraining Order*, and form CH-140, *Order After Hearing on Petition for Injunction Prohibiting Harassment*. The warning notices of the second page of each form would be corrected so that they would be in bold print. This would properly implement Penal Code section 12021(g)(1), which prohibits persons who know that they are subject to restraining orders from purchasing or receiving a firearm. The statute does not apply unless a copy of the restraining order that is personally served on the person to be restrained contains a notice “in bold print” providing specified warnings.

Form CH-150, *Instructions for Lawsuits to Prohibit Harassment*. This form provides instructions on how to obtain a restraining order prohibiting harassment. The instructions on page 3 state, “The defendant must be personally served at least two days before the hearing.” (Emphasis added.) However, Code of Civil Procedure section 527.6(g) requires that the defendant be served at least five days before the hearing. To avoid misleading litigants, the instructions would be changed to state the correct service requirement.

Form SC-120, *Defendant’s Claim and Order to Plaintiff (Small Claims)*. Recently the plaintiff’s claim form (SC-100) was amended to include a declaration that no defendant is in the military service. Federal law requires an affidavit that the defendant is not in the military before a default judgment may be entered. Due to an oversight, a comparable declaration was not included on the defendant’s claim form. The form would be revised to include this declaration. The Civil and Small Claims Advisory Committee supports this change.

Form 982(a)(6), *Request for Entry of Default*. Item 3 on the reverse side of the form would be amended to add the phrase “legal document assistant” before “unlawful detainer assistant,” because both assistants may help prepare legal claims for compensation under Business and Professions Code section 6400 et seq., and both must be registered by the county clerk.

Item 4 on the form would be corrected to replace the statement that a declaration is required for a “clerk’s judgment” to a statement that a declaration is required for

an “entry of default.” Code of Civil Procedure section 585.5(a) requires the declaration for “Every application to *enter default* . . . “ (Emphasis added.)

The note at the bottom of the form authorizing use of the 1991 form until June 30, 1997, would be deleted, since it is no longer pertinent.

Form 1286.50, *Declaration For Default or Uncontested Dissolution or Legal Separation (Family Law)*. When this form was revised effective July 1, 1999, there was an inadvertent error in referencing the number of another form, form 1285.55, the *Property Declaration (Family Law)*. The form would be revised to correct this reference.

Form 1299.16, *Notice of Entry of Judgment and Proof of Service by Mail (Governmental)*. Welfare and Institutions Code section 11355(d), which required the clerk to mail a notice to the defendant that his or her default has been taken in an action filed by the district attorney as the local child support agency, was reenacted as Family Code section 17430(d) and amended to require that the local child support agency send the notice of entry instead of the clerk. The form would be revised to conform to the amended code section.

Alternative Actions Considered

No alternatives exist other than continuing to use incorrect or incomplete rules and forms.

Comments From Interested Parties

These proposals were not circulated for comment because they are technical in nature and could not conceivably be controversial.

Implementation Requirements and Costs

Courts will incur some costs in printing the revised forms.